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OFFICE OF PETITIONS

In re Application of :
Briggs et al. :
Application No. 09/545,658 : ON PETITION
Filed: 10 April, 2000 :
Att'y Docket No. BRIGGS.011CP1 :

This is a decision on the petition under 1.137(b),¹ filed on 10 January, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 28 November, 2003, for failure to timely reply to the non-final Office action mailed on 27 August, 2003, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 23 September, 2004.

On 3 March, 2004, petitioners filed an amendment and a three month extension of time request with a certificate of mailing date "04/27/04". As the certificate of mailing was dated subsequent to the date of receipt of the paper in the Office, the certificate of mailing was obviously dated in error and was not dated with the date the application was deposited with the U.S. Postal Service. As such, the amendment and extension of time request are considered filed on the date of receipt in the Office, and are untimely.

Petitioner has indicated that the previously-filed amendment is the required reply.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The three-month extension request filed on 3 March, 2004, was submitted more than six (6) months after the mailing date of the Office action mailed on 27 August, 2003, and therefore is unnecessary. The extension of time fee paid on 3 March, 2004, will be credited to counsel's deposit account, No. 50-1746 as authorized in the extension of time request filed on 3 March, 2004.

The application file is being referred to Technology Center Art Unit 3714 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).